

August 25, 1999
L-99-9

TO: Philip H. Arnold
Chief of Records Analysis and Systems

FROM: Steven A. Bartholow
General Counsel

SUBJECT: Crediting Reservist Active Military Service

This is in response to your memorandum dated July 20, 1999, wherein you asked two questions regarding the crediting of active military service by a reservist under the Railroad Retirement Act. Before responding to the specific questions raised in your memorandum, a brief statement of the law and purposes behind the crediting of military service under the Railroad Retirement Act would be helpful. Section 1(g)(1) provides as follows:

For purposes of section 3(i)(2) of this title, an individual shall be deemed to have been in "military service" when commissioned or enrolled in the active service of the land or naval forces of the United States and until resignation or discharge therefrom; and the service of any individual in any reserve component of the land or naval forces of the United States, while serving in the land or naval forces of the United States for any period, even though less than thirty days, shall be deemed to have been active service in such force during such period.

Section 3(i)(2) of the Act provides as follows:

The "years of service" of an individual shall also include his voluntary or involuntary military service, within or without the United States, during any war service period: Provided, however, That such military service shall be included only if, prior to the beginning of his military service and in the same calendar year in which such military service began, or in the next preceding calendar year, the individual rendered service for compensation to an employer or to a person service to which

is otherwise creditable under this subchapter, or lost time as an employee for which he received remuneration, or was serving as an employee representative: Provided further, That such military service shall be included only subject to and in accordance with the provisions of subdivisions (1) and (3) of this subsection in the same manner as though military service were service rendered as an employee: And provided further, That such military service rendered after December 1956 shall not be included with respect to any month if (A) any benefits are payable for that month under the Social Security Act (42 U.S.C. 301 et seq.) on the basis of such individual's wages and self-employment income, (B) such military service was included in the computation of such benefits, and (C) the inclusion of such military service in the computation of such benefits resulted (for that month) in benefits not otherwise payable or in an increase in the benefits otherwise payable: And provided further, That an individual who entered military service prior to a war service period shall not be regarded as having been in military service in a war service period with respect to any part of the period for which he entered such military service.

The Board stated in its report on the bills which extended the crediting of military service after January 1, 1937, that the crediting of military service is predicated on the theory that credit for military service should be given to persons who, except for entrance into military service, would have remained in railroad service and would have accumulated credits toward annuities under the Railroad Retirement Act. Board Report on H. R. 3984 and H. R. 2845 dated July 2, 1941.

Thus, military service is only creditable if the individual enters military service during a war service period and if the individual had railroad service in either the year of entry into military service or the year immediately preceding entry into military service. Finally, the military service may not be credited as railroad service if, with regard to military service after 1956, the military service is the basis, either in part or in total, of a social security benefit payable under the Social Security Act.

Your first question is whether the active duty of a reservist who voluntarily entered the reserves or active uniform services but who is subsequently ordered to active duty or required by Call

... to enter and continue...@ active duty, should be considered creditable railroad service¹. For purposes of answering this question, we are assuming that the reservist entered the reserves in a war service period and that the reservist has the requisite railroad service prior to entry into active duty. If these conditions are met, the reservist's active military service would be creditable railroad service. This is the exact situation described in the Board's report cited above. In other words, the railroad worker would have received creditable railroad service if the reservist had not been involuntarily placed on active duty. The reservist's active duty is not voluntary; it is involuntary, since the reservist, like the draftee, has no choice in entering active duty.

Your second question is whether the reservist's annual active duty for training, usually two weeks plus transit time, should be treated in the same manner as other orders to active duty. We agree with your conclusion that any call to active duty is creditable railroad service provided that the other conditions for the crediting of military service are met. The Board's regulations, 20 CFR 212.2, provide that any period of active service by a member of a reserve component of the armed forces, even less than 30 days, is considered to be active duty. This

¹You referenced Legal Opinion L-98-24, stating that it indicates that a reservist's active military service is not creditable if the Reserve Forces enrollment began voluntarily during a non-war service period. The single controlling fact in L-98-24 was that the active service period fell outside of a war period. Such service therefore did not fall within the definition of "years of service@" and was not creditable as railroad service.

provision was clearly intended to cover the annual training period for such reservists.

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